

The Illinois Cemetery & Funeral Home Association

**A Resource for Understanding
The Industry, Its Practices and Relevant Laws**

July 2009

Illinois Cemetery & Funeral Home Association
www.icfha.org
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To: Commerce, Trade, and Consumer Protection
Subcommittee of the House of Representatives
Committee on Energy and Commerce

From: Harvey I. Lapin
ICFHA General Counsel

Date: July 27, 2009

Subject: Background Information

I serve as General Counsel of the Illinois Cemetery and Funeral Home Association (“ICFHA”), and have represented ICFHA for over 40 years. I am a nationally recognized expert in the legal areas related to the funeral, cemetery and cremation segments of what is commonly known as the “death care industry.” I have provided legal services to several national trade associations in this industry, including representing them during the extensive hearings in the 1980’s and 1990’s that resulted in the adoption and later amendment of the FTC Funeral Rule. Throughout my representation of ICFHA, I have provided legal services concerning Illinois legislation and administrative rules of interest to ICFHA. I have also assisted other state associations in the industry in connection with laws enacted in their states.

I. What Is ICFHA?

ICFHA is an Illinois State nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses (“the Industry”) in the state of Illinois. ICFHA was established in 1928 and currently has over 300 members in the Industry that range from very small family run businesses, municipal cemeteries, religious cemeteries, other non-profit cemeteries, to multi-unit regional companies and subsidiaries of national companies. ICFHA has always been at the forefront of state associations in the Industry throughout the country. Since it was organized in 1928 it has developed and enforced a strong Ethics Code for its members. It has presented educational programs and information for its members, non-members and for consumers.

ICFHA established the first state Consumer Advocate Committee in the Industry in 1975 to provide an avenue for consumers to file inquiries and complaints against members and non-members concerning areas of concern in the Industry. The Consumer Advocate Committee

was the basis for the establishment of a national consumer complaint mechanism (“Cemetery Consumer Council”) and similar committees in many other states. The Consumer Advocate Committee receives referrals of inquiries and consumer complaints from the Illinois Attorney General’s Office (“Attorney General”) and the Office of the Comptroller (“Comptroller”). The Consumer Advocate Committee has successfully resolved substantially all of the complaints filed with it involving its members and non-member since its establishment.

Since its inception, ICFHA has assisted the Illinois General Assembly and applicable state agencies by providing information and providing drafts of proposed legislation involving the industry to promote active competition for the benefit of consumers with the appropriate protections for consumers. ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country and the Illinois Cemetery Care Act (760 ILCS 100, *et seq.*) enacted in 1948 became the basis for similar laws in many other states. ICFHA was also the proponent of the Illinois Cemetery Pre-Need Sales Act (815 ILCS 390, *et seq.*), discussed hereafter, which governs the sale of pre-need cemetery merchandise and services.

ICFHA was also the primary proponent of the Crematory Regulatory Act (410 ILCS 18, *et seq.*) in 1986, and worked with the Office of the Comptroller and members of the legislature in connection with the introduction and enactment of this Act. The Crematory Regulatory Act was the first law regulating crematories on a comprehensive basis in the country. ICFHA also worked with the Comptroller’s Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act (“Funeral Trust Act”) to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller that were not contained in the Funeral Trust Act when it was originally enacted. ICFHA worked closely with the Department of Professional Regulation at the time the Funeral and Embalmers Licensing Act was being reviewed, under the sunset process, to remove restrictions in that law that restrained competition to the detriment of consumers.

The result of these efforts, and those of others, is that Illinois consumers can purchase the needed merchandise and services provided by the Industry from many active competitors at competitive prices. At the present time there is no segment of the Industry in Illinois that has a monopoly over or that is restraining competition on the other segments of the Industry.

II. Preliminary Statements.

The Illinois Cemetery and Funeral Home Association (ICFHA) strongly condemns the crimes allegedly committed by four employees at Burr Oak Cemetery. What these employees allegedly did violates everything ICFHA stands for, and offends a code of conduct that has governed the cemetery industry for centuries.

ICFHA believes that there are presently approximately 14,000 cemeteries in Illinois. Approximately 6,600 have some type of management and only 800 are privately operated.

III. What Are the Current Laws Governing the Industry?

Illinois already has extensive laws administered covering the cemetery segment of the industry. Most of these laws are under the Office of the Comptroller's jurisdiction.

- Cemetery Care Act (760 ILCS 100) ("Care Act") that applies to cemeteries privately operated that have established care funds;
- The Cemetery Association Act (805 ILCS 320) ("Association Act") that provides for the incorporation and operation of Cemetery Association for the benefit of the lot owners;
- Cemetery Protection Act (765 ILCS 835) ("Cemetery Protection Act") that has general provisions related to the operation of cemeteries;
- The Illinois Cemetery Pre-Need Sales Act (815 ILCS 390) ("Cemetery Sales Act") that primarily applies to pre-need sales by cemeteries; and
- Crematory Regulation Act (410 ILCS 18) ("Crematory Act") that covers the operation of crematories and the authorizations required.

IV. What Laws Apply to the Alleged Crimes?

BURR OAK CEMETERY SITUATION: APPLICABLE ILLINOIS LAW

There are five main statutes that can impose criminal penalties on persons that violate the law in this type of situation:

- (a) the Illinois Cemetery Protection Act (765 ILCS 835, et. seq.) imposes criminal felony penalties and fines for persons that willfully damage, destroy or desecrate human burial remains and markers without proper legal authority;
- (b) the Illinois Cemetery Care Act (760 ILCS 100, et. seq.) and the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) impose criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the preneed sale of cemetery merchandises and services;
- (c) Article 16 of the Illinois Criminal Code imposes criminal felony penalties and fines for various types of property theft that may be applicable;
- (d) the Pre-need Cemetery Sales Act (815 ILCS 390, et. seq.) imposes criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services; and
- (e) the Consumer Fraud and Deceptive Businesses Act (815 ILCS 505, et. seq.) may also be applicable regarding deceptive business practices.

A. ILLINOIS CEMETERY PROTECTION ACT (765 ILCS 835, et. seq.)

Section 1 of the Cemetery Protection Act specifically provides that:

"(a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or desecrates human remain is guilty of a Class 3 felony."

“(a-5) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.”

“(b-5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or remove a gravestone or other memorial, monument of marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, memorial park or battlefield is guilty of a Class 4 felony for damaging more than 1 and not more than 4 gravestones; a Class 3 felony for damaging more than 5 and not more than 10 gravestones; a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of the damage caused.”

B. ILLINOIS CEMETERY CARE ACT (760 ILCS 100, et. seq.)

The Burr Oak employees allegedly resold cemetery spaces in an undeveloped mausoleum without making the deposits required by the Act failed to maintain the required records.

Section 2a of the Cemetery Care Act provides for the record keeping requirements of deposits by cemetery authorities and the information that has to be provided to the public.

Section 4 of the Cemetery Care Act provides the deposit requirements for the designated amounts received for care from purchasers in connection with sales on an at need or preneed of cemetery spaces, crypts and niches.

The failure to provide this information or make the required deposits is a violation of the Act and could lead to Felony 4 and other penalties and fines. Section 24 of the Act specifically states the following:

“Whoever intentionally fails to deposit the required amounts into a trust provided for in this Act, intentionally and improperly withdraws or uses trust funds for his or her own benefit, or otherwise intentionally violates any provision of this Act (other than the provisions of Section 23 and subsections (b), (c), (d), and (e) of Section 2a) shall be guilty of a Class 4 felony, and each day such provisions are violated shall constitute a separate offense.”

“If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to such person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such liability shall be enforced in an action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.”

“In addition to the other penalties and remedies provided in this Act, the Comptroller may bring a civil action in the county of residence of the licensee or any person accepting care funds to enjoin any violation or threatened violation of this Act.”

“The powers vested in the Comptroller by this Section are additional to any and all other powers and remedies vested in the Comptroller by law.”

**C. ILLINOIS PRE-NEED CEMETERY SALES ACT
(815 ILCS 390, et. seq.)**

The Burr Oak employees allegedly sold crypts in undeveloped mausoleum (Emmet Till Mausoleum) without making the deposits required by the Act.

Section 23 of this Act specifically states the following:

“(a) Any person who fails to deposit the required amount into a trust provided for in this Act, improperly withdraws or uses trust funds for his or her own benefit, or otherwise violates any provision of this Act is guilty of a Class 4 felony.”

**D. ILLINOIS CRIMINAL CODE
(720 ILCS 5, et. seq.)**

The Burr Oak employees allegedly took the grave spaces belonging to others and resold them, as well as taking money from their employer.

The following portions of Article 16 of the Illinois Criminal Code (Theft and Related Offenses) may apply:

“Sec. 16-1. Theft.

(a) A person commits theft when he knowingly:

(1) Obtains or exerts unauthorized control over property of the owner; or

(2) Obtains by deception control over property of the owner; or

(5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence:

(5) Theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony.

(6) Theft of property exceeding \$100,000 and not exceeding \$500,000 in value is a Class 1 felony.

(6.2) Theft of property exceeding \$500,000 in value is a Class 1 non-probatonable felony.”

(7) Theft by deception, as described by paragraph (2) of subsection (a) of this Section, in which the offender obtained money or property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony.”

E. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505, et. seq.)

The Burr Oak employees allegedly sold grave spaces without disclosing to the purchasers that the grave spaces had been used before or that a second casket and human remains were under the new interment. This is in addition to the specific laws violated above and referenced in this Act as also being covered by this Act.

Section 2 of the Act specifically states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

In addition, Section 2Z of the Act states (emphasis added):

“Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, **the Cemetery Care Act**, the Safe and Hygienic Bed Act, **the Pre-Need Cemetery Sales Act**, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.**”

ICFHA believes that the current laws in effect adequately cover the alleged crimes by the employees of Burr Oak Cemetery. ICFHA would be pleased to continue to assist the Subcommittee and will timely respond to any additional questions or request for information.

Illinois Cemetery & Funeral Home Association Condemns Burr Oak Crimes

HOMewood, IL (July 10, 2009) – The Illinois Cemetery and Funeral Home Association (“ICFHA”) strongly condemns the crimes committed at Burr Oak Cemetery.

“What these employees did violates everything we stand for, and offends a code of conduct that has governed our industry for centuries,” said Vickie Hand, Treasurer of the ICFHA. “What happened is not only abhorrent and appalling, but it is clearly criminal. It violates laws and regulations that we have helped to craft over decades, and that we have worked hard to enforce.”

“Everyone wants to know how this could have happened,” said Harvey Lapin, General Counsel for the ICFHA. “There is no easy answer, except that, sadly, criminals break laws. These employees appear to have broken many laws – laws that our association helped put in place precisely because we understand the pain and horror that these actions cause.

“There seem to be a number of major laws that were broken,” Lapin added. “The Illinois Cemetery Protection Act makes it a crime to willfully damage, destroy or desecrate human remains and grave markers without authorization. Both the Illinois Cemetery Care Act and the Illinois Pre-Need Cemetery Sales Act make it a crime to steal people’s deposits on funeral and cemetery merchandise and services. These are in addition to crimes of property theft and deceptive business practices.”

A full list of the laws that ICFHA believes govern this situation is posted on the home page of ICFHA: www.icfha.org.

“The core of our business is providing people with the comfort that we will care for their loved ones and maintain their trust,” added Hand. “We are committed to doing everything we can as an association to help the victims and to ensure that this never happens again.”

ICFHA is an Illinois State nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses in Illinois. ICFHA was established in 1928 and currently has more than 300 members. In 1975, ICFHA established the first state Consumer Advocate Committee in the industry. This committee was the basis for the establishment of a national consumer complaint mechanism (“Cemetery Consumer Service Council”) and similar committees in many other states.

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The Illinois Cemetery & Funeral Home Association

The Illinois Cemetery and Funeral Home Association (ICFHA) is an Illinois state non-profit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses in the state of Illinois. ICFHA was established in 1928 and currently has over 300 members in the industry. These members range from very small family run businesses, municipal cemeteries, religious cemeteries, other non-profit cemeteries, to multi-unit regional companies and subsidiaries of national companies. We have members that do less than 25 interments a year and some that perform up to 3,000 per year.

ICFHA has always been at the forefront of state associations in the Industry throughout the country. Since it was organized in 1928 it has developed and enforced a strong Ethic Code for its members. It has presented educational programs and information for its members, non-members and for consumers.

There are approximately 14,000 cemeteries in Illinois, of which approximately 6,600 are active cemeteries. There are different categories of cemeteries, including:

- religious cemeteries which are owned by churches or religious organizations;
- there are locally owned cemeteries which are owned by a cities, townships or counties;
- there are private cemeteries which are owned by business owners;
- there are fraternal cemeteries, such as those for organizations like the Elks or Jewish fraternal burial associations; and
- there are veterans' cemeteries, which are dedicated to veterans and their families.

Approximately 800–900 of Illinois' cemeteries are privately owned. Some of these are owned by small family-owned enterprises which may operate one or two cemeteries, and some are subsidiaries of national corporations. The industry is not a high-profit or high-margin industry. Maintenance costs are ongoing. For any given cemetery in any given year, maintenance costs may exceed revenues. Municipal cemeteries may receive some ongoing operational support from property tax revenues, although these funds are subject to annual appropriation and may be constrained by other needs. Religious cemeteries may receive ongoing funds from contributions and donations, although these funds too are variable and voluntary.

Since its inception, ICFHA has assisted the Illinois General Assembly and various state agencies by providing information and providing drafts of proposed legislation involving the industry. ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country, the Illinois Cemetery Care Act. ICFHA was the proponent of the Illinois Cemetery Pre-Need Sales Act, that governs the sale of pre-need cemetery merchandise and services, and the Crematory Regulatory Act. ICFHA has worked with the Comptroller's Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act (Funeral Trust Act) to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller.

The History of ICFHA and State Regulation

Since its inception, ICFHA has assisted the Illinois General Assembly and various state agencies by providing information and providing drafts of proposed legislation involving the industry. ICFHA has worked hard to promote active competition for the benefit of consumers with appropriate protections for consumers.

ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country. This law, the Illinois Cemetery Care Act (760 ILCS 100 *et seq.*), was enacted in 1948 and subsequently became the basis for similar laws in many other states. ICFHA was also the proponent of the Illinois Cemetery Pre-Need Sales Act (815 ILCS 390 *et seq.*), that governs the sale of pre-need cemetery merchandise and services.

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ICFHA has worked with the Comptroller's Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act ("Funeral Trust Act") to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller that were not originally contained in the Funeral Trust Act. ICFHA worked closely with the Department of Professional Regulation at the time the Funeral and Embalmers Licensing Act was being reviewed, under the sunset process, to remove restrictions in that law that restrained competition to the detriment of consumers. ICFHA will continue to be a resource to the General Assembly for cemetery, cremation and funeral laws that benefit consumers and promote competition in the industry.

ICFHA established the first state Consumer Advocate Committee in the Industry in 1975 to provide an avenue for consumers to file inquiries and complaints against members and non-members concerning areas of concern in the industry. The Consumer Advocate Committee was the basis for the establishment of a national consumer complaint mechanism (the Cemetery Consumer Council) and similar committees in many other states. The Consumer Advocate Committee receives referrals of inquiries and consumer complaints from the Illinois Attorney General's Office and the Office of

the Comptroller. The Consumer Advocate Committee has successfully resolved substantially all of the complaints filed with it involving its members and non-members since its establishment.

The annual report of the complaints filed with the Cemetery Consumer Council indicate that many of the complaints deal with maintenance issues where the consumer expectations exceed the ability of the cemetery to respond. There may often be difficulty in responding because of weather conditions or limited funds. Very few if any of the complaints deal with law violations or deceptive sales practices. The Federal Trade Commission periodically issues summaries of the complaints filed with it and it should be noted that there have been virtually no complaints filed against cemeteries before the FTC for many years.

ICFHA is a recognized continuing education provider. It continues to provide opportunities to members and non-members alike for the maintenance of professional hours or for their own benefit. ICFHA was one of the first state associations to establish a Crematory Certification Program in the nation. This program was approved by the Office of the Illinois Comptroller when the Crematory Regulatory Act provided for the establishment of such programs in 2003. Classes are held once a month for the certification of member and nonmember crematory operators.

ICFHA will continue to be a resource to this commission and to the General Assembly for cemetery, cremation and funeral laws that benefit consumers and promote a healthy, responsible and competitive industry.

BURR OAK CEMETERY SITUATION:

APPLICABLE ILLINOIS LAW

There are five main statutes that can impose criminal penalties on persons that violate the law in this type of situation:

(a) the Illinois Cemetery Protection Act (765 ILCS 835, et. seq.) imposes criminal felony penalties and fines for persons that willfully damage, destroy or desecrate human burial remains and markers without proper legal authority;

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(c) Article 16 of the Illinois Criminal Code imposes criminal felony penalties and fines for various types of property theft that may be applicable;

(d) the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) imposes criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services;

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“If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to such person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such liability shall be enforced in an

action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.”

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The following portions of Article 16 of the Illinois Criminal Code (Theft and Related Offenses) may apply:

“Sec. 16-1. Theft.

(a) A person commits theft when he knowingly:

(1) Obtains or exerts unauthorized control over property of the owner; or

(2) Obtains by deception control over property of the owner; or

(5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence:

(5) Theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony.

(6) Theft of property exceeding \$100,000 and not exceeding \$500,000 in value is a Class 1 felony.

(6.2) Theft of property exceeding \$500,000 in value is a Class 1 non-probatable felony.”

(7) Theft by deception, as described by paragraph (2) of subsection (a) of this Section, in which the offender obtained money or property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony.”

V. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505, et. seq.)

The Burr Oak employees allegedly sold grave spaces without disclosing to the purchasers that the grave spaces had been used before or that a second casket and human remains were under the new interment. This is in addition to the specific laws violated above and reference in this Act as also being covered by this Act.

Section 2 of the Act specifically states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and

the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

In addition, Section 2Z of the Act states (emphasis added):

“Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, **the Cemetery Care Act**, the Safe and Hygienic Bed Act, **the Pre-Need Cemetery Sales Act**, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d -135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.**”

How to Choose a Cemetery in Illinois

There are thousands of cemeteries in Illinois. Most of them have operated for generations and some of them for centuries. Nothing like the events at Burr Oak has ever happened in Illinois before. If you have a loved one in an Illinois cemetery other than Burr Oak, then you can be assured that the cemetery must maintain a record of your loved one's location.

How do I choose a cemetery?

Usually a family considers to bury loved ones where other family members are already located. Consider the location of the cemetery: is it convenient for family visits? Consider whether it meets the requirements of your family's religion. Consider what, if any, restrictions the cemetery places on burial vaults, the type of monuments or memorials it allows, and whether flowers or other remembrances may be placed on graves and when.

Finally consider the care of the cemetery. Does it look well-maintained? What kind of impression do you get from the staff? Are the graves, roads, offices and fences in good shape?

Cost may be a consideration. Interment rights can be expensive, especially in metropolitan areas. At most, but not all, cemeteries you are required to purchase a grave liner, which will cost several hundred dollars. There are typically charges to open and close a grave for an interment. Verify if a cemetery is licensed for future care when you purchase your interment rights. These cemeteries are audited and monitored by the Illinois State Comptroller's Office.

Are all cemeteries alike?

No, there are different kinds of cemeteries. There are religious cemeteries, which are owned by a church or religious organization; there are locally owned cemeteries which are owned by a city, township or county; there are private cemeteries which are owned by business owners; there are fraternal cemeteries, such as those for organizations like Masonic or Jewish fraternal burial associations; and there are veterans' cemeteries, which are dedicated to veterans and their families.

What products and services do cemeteries offer?

Cemeteries offer a number of different arrangements. Interment rights, the traditional in-ground grave, are the most typical product, but there are also lawn crypts, columbarium niches and mausoleums.

Some cemeteries offer more affordable arrangements. One such option, that has been offered for generations, is multi-level burial. In this kind of interment, the deceased are buried in a row, one after the other. The cemetery still maintains the records, forever, and the marker remains at that grave, forever. Because less maintenance and labor is involved, this arrangement is for those who want an alternative to cremation.

What can I do to make sure things are ok at my loved one's cemetery?

Visit your loved one's grave site. If you didn't buy a memorial, buy one to make it easier for you to find your loved one. Ask to see a copy of the cemetery's rules and regulations. If it is a condensed set, feel free to request and review the entire set.

Be patient. Everyone is very worried right now, and cemetery offices are responding to a flood of inquiries. Cemetery operators and their staffs are caring people who want to be as helpful as possible, but it takes time to respond to all the calls and questions they are receiving.

What if something looks wrong when I visit my loved one?

Ask at the office. Understand that cemeteries are works in progress; every time there is an interment, there will be some disturbance to the landscape. Sometimes the cemetery will temporarily move a marker to prevent damage; the marker may not be replaced for a time until the ground conditions allow.

How can I check out a cemetery to see if there have been problems in the past?

Contact the office of the Illinois Comptroller; this office has responsibility for consumer complaints about cemeteries. Their web site is <http://www.ioc.state.il.us/office/ccbt/> and Consumers within Illinois can call the consumer hot-line toll-free at 1.877.203.3401. If you are calling outside Illinois, please call the general number at 312.814.2451. If consumers prefer, they can e-mail the staff at ccbt@mail.ioc.state.il.us.

Resources

The Federal Trade Commission offers a funeral guide for consumers: <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm>

SOUTHTOWNSTAR

Law already says no grave robbing

July 16, 2009

The issue: Officials are calling for strict new regulations mandating how cemeteries do business - and creating new government layers to carry out this task.

We say: We don't need more bureaucracy. We need prosecution of this crime.

Decaying bodies dumped in a jumbled heap. Grave robbery. Desecration. Injustice and greed.

The Burr Oak Cemetery scandal is the stuff nightmares are made of.

So ... there ought to be a law, right?

There ought to be rules and regulations and someone with a clipboard to enforce them.

That's what some state officials are proposing.

Illinois Comptroller Dan Hynes calls for a plan to give the state new and needed oversight concerning cemeteries. Plenty of legislators are clamoring for the same.

Translation: "This is appalling. This is bad. The public is calling for heads on a pike. We should ... DO SOMETHING!

Let's create new offices! New officials! New documents and processing systems! Let's pay for it all with new taxes and proudly proclaim we're leading the charge against this moral assault on our dearly departed, dead citizenry.

Except of course, grave robbing is already illegal.

It's time to step back here.

Such a stupid, likely isolated crimi-

nal scheme simply must not be allowed to create an entire squadron of cemetery functionaries - wandering with global positioning units to track the mostly peaceful, mostly quiet, grave sites of hundreds of thousands of Illinoisans.

Indeed, it's this kind of misguided thinking that has led Illinois state government into the bloated, fetid bureaucracy it has become.

"No one regulates, licenses or oversees the operations of a cemetery, how bodies are buried, what type of people are allowed to handle bodies," Hynes told the Chicago Sun-Times.

And that is true.

And that is because we do not cede our bodies to Cook County or the State of Illinois when our last breath is drawn.

Be it a church or a private corporation, most of us deposit our bones on private land - with no expectation that some sort of taxpayer guarantee is backing our eternal rest.

It's a hard thing to face for a politician: Sometimes they can't fix our problems. Sometimes they just need to stick their noses back where they belong.

Yes, officials have a role here - to prosecute wrongdoers.

Act immediately and decisively on tips of future or past cemetery crimes.

Set a clear example that illegal acts will be punished.

And last but not least - let the rest of the dead rest in peace.

(<http://www.southtownstar.com/news/opinion/editorials/1668259,071609editcemetery.article>)



Cemeteries Field Worried Calls

Families Across Midwest Make Sure Body-Dumping Scandal Is an Isolated Incident

July 18, 2009

By DOUGLAS BELKIN and
CARRIE PORTER

Cemetery directors across the Midwest have been bombarded with anxious callers worried that a ghoulish scandal in a suburban Chicago burial ground isn't an isolated incident.

Authorities recently arrested four employees at Burr Oak Cemetery, alleging they dug up and dumped as many as 300 corpses to resell the used burial plots. The gruesome details have unnerved families as far away as Milwaukee and Kansas City, who have then flooded cemetery directors with concerns. So far, no other deception has turned up.

"We've been inundated with visitors trying to find loved ones that are buried here," said Vickey Hand, president of Washington Memory Gardens outside Chicago. "People are walking in here, one after the other, who haven't been here in 40 or 50 years, with this look of apprehension on their face."

Cook County Sheriff Tom Dart learned of the alleged grave-reselling scheme about two months ago, when his office was contacted by Perpetua Inc., the Arizona-based owner of Burr Oak, saying that the company was concerned about financial irregularities there.

Sheriff Dart said that when detectives initially went to the cemetery, they discovered a pile of bones from more than 100 bodies decomposing above ground in a fenced, overgrown area. He said

the corpses were dug up so that their plots could be reused. He estimates the scheme generated about \$250,000.

Burr Oak, founded nearly a century ago, was one of the first predominantly African-American cemeteries in the Chicago area. Among the historic figures buried there are civil-rights icon Emmett Till, blues legend Dinah Washington and heavyweight boxing champion Ezzard Charles.

On Friday, sheriff's deputies continued to scour four sections of the cemetery, which holds about 100,000 graves. They are searching for additional remains and trying to match discarded headstones to burial plots. Disintegrating and incomplete interment records and maps have slowed the process.

Since news about the cemetery broke, Sheriff Dart said he has been flooded with more than 55,000 requests from families looking for information about loved ones buried there. He said he isn't optimistic all the human remains will be identified.

"That will be very, very difficult," Sheriff Dart said Friday. He compared the process to identifying victims of a plane crash, but without the passenger manifest. "We don't even know who the universe of people is."

Illinois lawmakers this week considered additional regulation to require the exact location of interments on death certificates. But the legislative session expired before any action was taken.

Elsewhere in the Midwest, a De-

troit Memory Gardens employee said there has been a small influx of people who have come by to inspect their family plots. In St. Louis, Richard Lay of the Bellefontaine Cemetery said he has "heard a couple of comments that were joking in an offhand way, and I took it offensively," he said. "There are a lot of upset families, and I take it very seriously."

Harvey Lapin, general counsel of the Illinois Cemetery and Funeral Home Association, said cemetery owners around the state have been peppered with calls from different parts of the country asking, "You're not doing anything like this, are you?"

Linzay Kelly, an amateur genealogist in Houston with relatives buried in Burr Oak, said he has been concerned that something like this might happen for some time.

"There's just a panic out there that this isn't the only place this was happening," said Mr. Kelly, who has unsuccessfully tried to track down the graves of several family members who died in the 1940s and were buried in Illinois. "I've been to cemeteries where entire sections aren't there. It makes you suspicious."

Paula Everett, president of Mount Greenwood Cemetery, which isn't far from Burr Oak, said she has received about 150 calls and visits from anxious relatives since the news broke on July 8. "I can understand why people are nervous," she said. "I tell them to come down, we have every record back to day one in 1879."

Biography of Harvey I. Lapin

Harvey I. Lapin is a principal in the Northbrook, Illinois law firm of Harvey I. Lapin, P. C. He specializes in the areas of funeral, cemetery, cremation, tax and corporate law. He is a member of the Illinois, Wisconsin and Florida Bars, and is a Certified Public Accountant. He was born and raised in St. Louis, Missouri. He graduated from Northwestern University in 1960 with a Bachelor of Science degree, with a major in accounting. He graduated from Northwestern Law School in 1963.

He was employed at the Office of Chief Counsel of the Internal Revenue Service in Washington, D. C. from 1963 through 1968. He worked in the National Office of Chief Counsel of the IRS for three (3) years and thereafter served as a trial attorney in the Washington D.C. Office of the District Counsel. He worked extensively in the tax-exempt cemetery area and also received a Masters in Tax Law degree from Georgetown Law Center in 1967 while working for the Internal Revenue Service. Thereafter he was employed by and became a partner in a law firm in Chicago, Illinois, and subsequently established his own firm. He conducted his own practice until January 1, 1992 when he joined a 65-lawyer firm located in Chicago, Illinois. In October of 1993, that firm dissolved, and he re-established his own firm in Northbrook, Illinois.

He was a founding member of the Cemetery Advisory Board to the Comptroller of the State of Illinois and served on that Board for over 20 years. He is general or special counsel to numerous for-profit and not-for-profit cemetery corporations and profit funeral corporations throughout the country. He is General Counsel to the Illinois Cemetery and Funeral Home Association and several other state trade associations in the cemetery and funeral home industry. He was General Counsel to the Cremation Association of North America for over 30 years and has been Special Counsel to the International Cemetery, Cremation, and Funeral Association. He is a nationally recognized expert in the areas of Cemetery, Cremation and Funeral Law and during his legal career has been the primary draftsman or involved in drafting industry related legislation

in over 40 states. He has also been involved in the drafting of federal tax legislation and FTC Funeral Rule regulations in connection with industry related matters. He was a consultant on cemetery, funeral and cremation legal areas for Ann Landers and has provided the same assistance to the authors of the "Dear Abby" and "Ask Amy" columns. He has represented clients in over two hundred and fifty transactions involving the purchase and sale of funeral homes, crematories and cemeteries, both profit and tax exempt.

He has been a member of the faculty of the John Marshall Law School in Chicago since 1969 and is presently teaching the subject of Tax Exempt Organizations in the Masters in Taxation Program. He was involved in the establishment of the Lawyer's Assistant Program at Roosevelt University in Chicago and served as the Chairman and member of the Advisory Board for that program. He is the First Chairman and now serves as a member of the Tax Exempt Subcommittee of the Section of Taxation of the Chicago Bar Association and presently is a member of the Tax Exempt Organization Committee of the Section of Taxation of the American Bar Association. He is a member of the TE/GE Council advisory group to the Great Lakes Region of the Internal Revenue Service.

He has been a lecturer for the Practicing Law Institute and chaired a seminar on the subject of tax-exempt organizations for them. He has been a speaker on various topics of interest to members of National, State and Local Funeral, Cemetery and Cremation Associations on numerous occasions during his legal career. He has written numerous articles on the subject of taxation, cemetery and funeral law for National, State and Local Death Care Industry Associations and is presently the primary contributor to the "Cemetery and Funeral Business and Legal Guide" published by CB Legal Publishing Corporation in Northbrook, Illinois since 1972. He has been selected to be included in Who's Who in American Law, 1st through current editions, Who's Who in the Midwest, Who's Who in America, and Who's Who in the World.